

## Memorandum

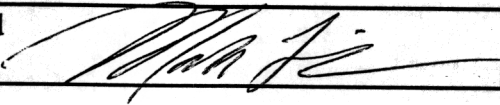
**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Betsy Shotwell

**SUBJECT:** USA PATRIOT ACT AND  
PATRIOT ACT II

**DATE:** September 19, 2003

Approved



Date

9/22/03

### RECOMMENDATION

- Adoption of a resolution opposing the provisions of the USA Patriot Act that infringe on important civil liberties and any future legislation, rules, regulations or executive orders that strengthen, reinforce, broaden or otherwise expand the provisions of the act that infringe upon civil rights and liberties. (Attachment A).

### BACKGROUND

On September 10, 2003, the Rules Committee discussed correspondence from the City of San Jose's Human Rights Commission expressing "its concern that fundamental constitutional rights and liberties will be threatened by the manner in which federal authorities investigate and prosecute acts under the war on terrorism if draft legislation known as the Patriot Act II is passed." At the Commission's August 21 meeting, the group "voted unanimously to recommend to the Mayor and Council that they adopt a resolution opposing draft legislation known as the Patriot Act II, and directing City departments to refrain from participation in activities of the federal government that would violate individuals' civil rights and liberties." The Rules Committee moved to ask staff to evaluate the Commission's request and referred the item to the September 23rd City Council meeting for Council consideration. Consistent with the Rules Committee direction, the Commission's correspondence and resolution is attached as Attachment B.

### ANALYSIS

The "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act," also known as the USA Patriot Act, (PL 107-56) was written in response to the terrorist attacks of September 11, 2001. The full text of PL 107-56 is available on-line at the Library of Congress Thomas legislative information system at <http://thomas.loc.gov>.

In 2001, the Patriot Act passed almost unanimously in the Senate with a vote of 98-1, with both California Senators supporting it. The bill also passed the House with a vote of 357 to 66, with 9 members not voting. San Jose's Congressional delegation split on the Act with Representatives Eshoo, Lofgren and Pombo voting in favor while Honda and Stark voted against it. The Act was signed into law by the President in what he considered an essential step in defeating terrorism in the United States.

The USA Patriot Act's major provisions include:

-- Records: The law allows FBI agents investigating suspected terrorism to go to a secret court to obtain a warrant for records -- membership lists, medical files, DNA evidence, records of borrowed and purchased books -- held by business and other institutions, including libraries and bookstores.

-- Searches: The law allows "sneak and peek" searches, which generally involve a surreptitious entry to examine, photograph and copy material but not to seize property. A court issuing the search warrant for evidence of a crime -- terrorism or other -- can also order that a suspect not be notified until later if immediate notice poses a risk of injury, destruction of evidence or harm to an investigation.

-- Wiretaps: Federal agents are no longer limited to getting separate court warrants to wiretap every telephone used by a suspected terrorist. Instead, investigators can obtain warrants for "roving" wiretaps, which allow them to tap on any telephone used by a suspect.

-- Computers: The law lets federal agents obtain court orders to track all outgoing and incoming e-mails from a computer used by a suspected criminal. The expanded law also applies to Internet sites visited by a suspect's computer. Investigators are prohibited from looking at the contents of the e-mail messages they're tracking.

-- Evidence: The law allows federal prosecutors investigating international terrorism or spying to obtain evidence from wiretaps and searches conducted by intelligence agents. Intelligence searches do not have to meet the same rigorous standards as criminal searches. Another provision allows disclosure of confidential grand jury evidence to intelligence and immigration officers.

-- Detention: The law allows the government to detain noncitizens for up to seven days based on reasonable suspicion that they are involved in terrorism or threaten national security, a less-demanding standard than the previous requirement of probable cause. After seven days, the person would have to be charged with a crime, placed in deportation proceedings or released.

-- Schools: The law permits federal agents investigating terrorism to obtain academic records of any student in a U.S. educational institution.

-- Banks: The law requires banks and other financial institutions to verify the identities of applicants for new accounts and to check customers' names against lists of known or suspected terrorists. The law also expands government authority to require financial institutions to monitor and report suspected foreign money-laundering.

Since the Patriot Act's adoption, there has been growing concern over the measure's provisions. Under an effort led by the ACLU, over 150 local governments and three states have adopted resolutions opposing parts or all of the measure. In California, the Counties of Santa Clara, Contra Costa, San Mateo, Marin, Santa Cruz, San Francisco, Lake, Mendocino, and Yolo have all passed resolutions against all or parts of the Act. The Cities of Palo Alto, Los Gatos, Santa Cruz, Oakland, Richmond, Hayward, Berkeley and Union City have also passed their own resolutions. U.S. cities also passing similar resolutions include Denver, Detroit, Honolulu, Minneapolis, and Seattle.

In August of this year, State Senator John Burton introduced a resolution that urges the California congressional delegation to protect American's civil rights and liberties against both the provisions of the USA Patriot Act or any future federal legislation. The measure is currently in the Senate Rules Committee awaiting assignment and will not be heard until the Legislature reconvenes in 2004.

The Patriot Act covers a wide variety of areas, from money-laundering to changes in immigration law. Some aspects of the Act, such as the provision to provide for the victims of September 11, have solicited little comment. Other provisions that seem to limit or impinge upon rights and liberties protected under the US Constitution have created more controversy. These provisions include the Patriot Act's increases in law enforcement's investigative abilities and easement of restrictions on foreign intelligence gathering abilities. Other areas that have caused concern are the Act's addition of new crimes and penalties to law and its modification of the judicial process. Those provisions of the Patriot Act that have a direct impact on local government are discussed below.

Section 215 of the Patriot Act modifies the Foreign Surveillance Intelligence Act (FSIA) with provisions, which apply to keepers of "business records," which includes hotel, airline, storage locker or car rental business records. Prior to the Patriot Act, federal agents who were conducting a terrorism-related investigation could seek a court order for business records, and the businesses to which the orders were addressed were bound to silence. The Patriot Act expands this search capability to "any tangible item no matter who holds it." This has been interpreted to include library loan records and the records of library computer use. Under the provisions of the law, libraries are forbidden from informing individual patrons that this information is being shared with federal law enforcement.

Libraries have been particularly sensitive to the implementation of the Patriot Act and the American Library Association notes that "privacy is essential to the exercise of free speech, free

thought, and free association. In a library, the subject of a user's interest should not be examined or scrutinized by others, especially our government. Provisions of the USA Patriot Act seriously undermine our civil rights and liberties guaranteed under the United States Constitution."

The specific impacts of the Patriot Act on the City of San Jose Library system are as follows:

- If the CIA or FBI have reason to believe that acts of terrorism have originated in the library or if a patron with a library account has been identified as a person of interest to the CIA or FBI, staff must provide information about their reading/listening/viewing habits and any information on account such as address, telephone number and email address.
- A warrant is still required, but is issued through the Foreign Intelligence Surveillance Act or "FISA Court", and not through the local courts.
- Staff may only share this request with their supervisor, who will report this to the Library Administration. The Library Administration may consult with the City Attorney's Office. At no time is the patron who is under investigation to be alerted to the inquiry.

In response to the Patriot Act, library systems around the Bay Area have taken a number of actions. Many libraries are immediately clearing records – either physically, or electronically – so that the records are no longer in existence. In the City of Palo Alto, six days after a book is returned, all records of the transaction are automatically deleted from the computer system and paper records are shredded. In Santa Cruz County, staff has posted signs in their libraries warning patrons of the obligation the library has to comply with the USA Patriot Act.

In the City of San Jose's library system library circulation records are not kept after an item is returned. The only customer records that are kept are for those items currently checked out; returned with fines still outstanding; and those items still to be returned. Internet usage logs are kept in electronic form for only a week. Individual information regarding name, address and other data acquired in issuing a library card is kept on file for as long as the library card is valid and up to two years after the card has expired.

With regards to the City of San Jose's Police Department (SJPd) policies and procedures, the Police department does not involve itself in investigations of a non-criminal nature be they of a group or individual and does not violate one's civil rights or liberties if requested to do so by others. The SJPd would and does investigate people and groups who are involved in criminal activity, and the Department also works with local, State and federal agencies on these investigations. As stated prior to the enactment of the USA Patriot Act, it is the mission of the Department's Criminal Intelligence Unit "to collect, analyze, disseminate information on the criminal activities of organized crime groups, emerging criminal groups, public disorder and terrorist groups, and threats to public officials or private citizens. The result of this effort is to provide the Chief of Police with the knowledge and information necessary to make informed judgments and take appropriate action to effectively counter and control the criminal activities with the City of San Jose." And from the Unit's statement of principles, "In an effort to maintain

the balance between the rights of the individual and controlling criminal activity, unit personnel subscribe to the principle of absolute prohibition against the use of illegal or unauthorized methods of obtaining or distributing criminal intelligence information.”

### **Patriot Act II**

The Domestic Security Enhancement Act of 2003, also known as Patriot Act II, is not an official document. A draft of the Act began circulating on the Internet last winter, but the proposal has yet to be introduced in Congress. The proposed draft language builds on the existing Patriot Act and focuses on changes to law enforcement authority.

The specific objections to the Patriot Act II are similar to those raised in opposition to the original Patriot Act. The proposed law makes a number of changes related to the authority of local law enforcement. The measure would increase information sharing between federal, state and local law enforcement. The Patriot Act broadened authority amongst federal agencies, but according to the ACLU, “did not adequately address the need for enhanced information sharing authority in relation to state and local officials and foreign governments, who are the critical partners in the United States in investigating terrorist crimes and preventing future terrorist attacks.” Specifically, information such as consumer credit, visa-related information, and educational records could be shared.

The draft legislation increases government electronic surveillance and data collection abilities, including provisions, which would:

- Give the Attorney General the authority to authorize wiretaps or electronic surveillance without any court permission in the event of an attack on the United States;
- Expand the authority to use pen register and trap and trace authority (as provided under the Patriot Act) beyond individuals suspected in terrorism investigations to any type of investigation. The ACLU states that this section is “opening the door to expanded government surveillance of United States citizens and lawful permanent residents under controversial government law enforcement technologies...”

Since the Patriot Act II is still in draft form, it is difficult to assess the precise impacts the measure might have on the City of San Jose and local governments in general. Therefore, staff is recommending that the resolution include a reference to opposing “future legislation, rules, regulations or executive orders that strengthen, reinforce, broaden or otherwise expand the provisions of the act that infringe upon civil liberties.” Thus, with modifications of the resolution originally proposed by the Human Rights Commission, staff recommends adoption of the following resolution which conveys opposition to provisions to the Patriot Act, which would infringe upon civil liberties.

HONORABLE MAYOR AND CITY COUNCIL

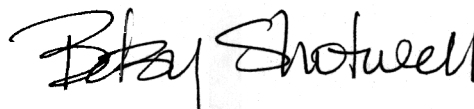
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Subject: USA Patriot Act and Patriot Act II

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### **COORDINATION**

This memo was coordinated with the City Attorney's Office, the Library and Police Departments, the Office of Emergency Services, and the City's federal lobbyist firm of Patton Boggs.

A handwritten signature in black ink, reading "Betsy Shotwell". The signature is fluid and cursive, with the first name "Betsy" and last name "Shotwell" clearly distinguishable.

BETSY SHOTWELL

Director, Intergovernmental Relations

#### **Attachments:**

- A. Staff recommended resolution with regards to the USA Patriot Act
- B. Human Rights Commission letter of August 27, 2003 regarding Patriot Act II and proposed resolution.

**RESOLUTION OF THE CITY COUNCIL OF SAN JOSE  
TO DEFEND THE BILL OF RIGHTS AND CIVIL LIBERTIES**

**WHEREAS**, the City of San Jose has a long and distinguished tradition of protecting the civil rights and civil liberties of its residents; and

**WHEREAS**, the City of San Jose has a diverse population, including immigrants, students, and working people, whose contributions to the community are vital to its character and function; and

**WHEREAS**, fundamental constitutional rights and liberties are essential to the preservation of a just and democratic society; and

**WHEREAS**, several new federal laws, regulations, and executive orders issued since the terrorist attacks of September 11, 2001, including the adoption of certain provisions of the USA PATRIOT Act (collectively, the "Act"), now threaten these fundamental constitutional rights and liberties, including:

- Freedom of speech and religion;
- Right to privacy;
- Right to counsel and due process in judicial proceedings;
- Right to equal protection before the law; and
- Protection from unreasonable searches and seizures; and

**WHEREAS**, the powers granted under the Act threaten the civil rights and civil liberties of San Jose residents, and particularly affect those of Arab-American, Muslim, and South Asian backgrounds; and

**WHEREAS**, thirty years ago California voters overwhelmingly adopted a Constitutional right to privacy to protect against a "proliferation of government snooping and data collecting [that] is threatening to destroy our traditional freedoms;" and

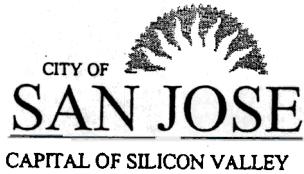
**WHEREAS**, the failure to defend civil liberties during World War II led to the incarceration of 120,000 Americans of Japanese descent in California and other western states as well as the incarceration of German and Italian Americans, and Hungarian, Romanian and Bulgarian Americans.

**WHEREAS**, during the 1930s and 1950s, the U.S. government systematically rounded up and deported thousands of Mexican immigrants and Americans of Mexican descent;

**THEREFORE BE IT NOW RESOLVED**, that the Mayor and City Council of San Jose:

- 1 Affirm its strong support for fundamental constitutional rights and its opposition to (1) the provisions of the Act that infringe on important civil liberties and (2) any future legislation, rules, regulations or executive orders that strengthen, reinforce, broaden, or otherwise expand the provisions of the Act that infringe on civil liberties.
2. Affirm its strong opposition to terrorism but also affirm that any efforts to fight terrorism not be waged at the expense of the fundamental civil rights and liberties of the people of the City of San Jose, and the United States.
3. Affirm its strong support for the constitutional rights of immigrant communities in San Jose and oppose racial profiling and the scapegoating of immigrants.
4. Send a letter and a copy of this Resolution to the City of San Jose's U.S. Senate and Congressional Delegation urging them to (1) work to repeal all provisions of the Act that infringe on civil liberties and (2) to oppose any future legislation, rules, regulations or executive orders that strengthen, reinforce, broaden, or otherwise expand the provisions of the Act that infringe on civil liberties. A copy of the letter and resolution shall also be sent to President Bush and Attorney General John Ashcroft.





*Human Rights Commission*

August 27, 2003

The Honorable Mayor and City Council  
City Hall  
801 North First Street, Room 600  
San Jose, CA 95110

Dear Mayor Gonzales and Councilmembers:

The Human Rights Commission wishes to express its concern that fundamental constitutional rights and liberties will be threatened by the manner in which federal authorities investigate and prosecute acts under the war on terrorism if draft legislation known as the Patriot Act II is passed. The Commission believes that security in the nation can be accomplished without jeopardizing basic constitutional rights and freedoms that are essential to the preservation of a just and democratic society.

At its meeting on August 21, 2003, the Commission heard a presentation by the Silicon Valley for Civil Rights organization, and voted unanimously to recommend that the Mayor and Council to adopt a resolution opposing draft legislation known as the Patriot Act II, and directing City departments to refrain from participation in activities of the federal government that would violate individuals' civil rights or civil liberties. A proposed resolution is attached for your consideration.

The Commission looks forward to the opportunity to discuss this recommendation at a future meeting of the Council.

Thank you for your time and we hope that our recommendations assist you in making the right decision as you continue to work on safeguarding human rights for all our residents in San Jose.

Sincerely,

*Robert C. Bailey*  
Robert C. Bailey  
Chair

c Del D. Borgsdorf, City Manager

HUMAN RIGHTS COMMISSION  
PROPOSED RESOLUTION  
FOR CONSIDERATION BY THE SAN JOSE CITY COUNCIL

Proposed Resolution to Defend the Bill of Rights and Civil Liberties

WHEREAS, the City of San Jose has a long and distinguished tradition of protecting the civil rights and civil liberties of its residents; and

WHEREAS, the City of San Jose has a diverse population, including immigrants, students, and working people, whose contributions to the community are vital to its character and function; and

WHEREAS, fundamental constitutional rights and liberties are essential to the preservation of a just and democratic society; and

WHEREAS, several new federal laws, regulations, and executive orders issued since the terrorist attacks of September 11, 2001, including the adoption of certain provisions of the USA PATRIOT Act (collectively, the "Act"), now threaten these fundamental constitutional rights and liberties, including:

- Freedom of speech and religion;
- Right to privacy;
- Right to counsel and due process in judicial proceedings;
- Right to equal protection before the law; and
- Protection from unreasonable searches and seizures; and

WHEREAS, the powers granted under the Act threaten the civil rights and civil liberties of residents of the City of San Jose, and particularly affect those of Arab-American, Muslim, and South Asian backgrounds; and

WHEREAS, draft legislation entitled the Domestic Security Enhancement Act (DSEA," also known as "PATRIOT Act II") which may contain new and sweeping law enforcement and intelligence gathering powers that would further undermine basic constitutional rights and our unique system of checks and balances by:

- Removing checks on government surveillance authority and diminishing personal privacy;
- Increasing government secrecy;
- Expanding the definition of "terrorism" in a way that threatens the constitutionally protected rights of all Americans; and
- Eroding the right of all persons to due process of law; and

WHEREAS, thirty years ago California voters overwhelmingly adopted a Constitutional right to privacy to protect against a "proliferation of government

snooping and data collecting [that] is threatening to destroy our traditional freedoms;" and

WHEREAS, the failure to defend civil liberties during World War II led to the incarceration of 120,000 Americans of Japanese descent in California and other western states; and

WHEREAS, during the 1930s and 1950s, the U.S. Government systematically rounded up and deported thousands of Mexican immigrants and Americans of Mexican Descent;

THEREFORE BE IT NOW RESOLVED, that the City Council of the City of San Jose:

1. Affirm its strong support for fundamental constitutional rights and its opposition to (1) provisions of the Act that infringe on important civil liberties and (2) any future legislation, rules, regulations or executive orders that strengthen, reinforce, broaden, or otherwise expand the provisions of the Act that infringe on civil liberties.
2. Affirm its strong opposition to terrorism but also affirm that any efforts to fight terrorism not be waged at the expense of the fundamental civil rights and liberties of the people of the city of San Jose, and the United States.
3. Affirm its strong support for the constitutional rights of immigrant communities in the City of San Jose and oppose racial profiling and the scapegoating of immigrants.
4. Encourage City departments to (1) determine how the new federal powers under the Act are affecting residents of the City of San Jose; (2) monitor requests for cooperation in investigations utilizing those new powers on an ongoing basis; and (3) regularly report their findings to the City Manager for submission to the City Council.
5. Direct the City Manager to ensure that the San Jose Police Department and other departments, to the extent legally possible, not officially assist or voluntarily cooperate with investigations, interrogations or arrest procedures, public or clandestine that are in violation of individuals' civil rights or civil liberties.
6. Send a letter and a copy of this Resolution to Senators Diane Feinstein and Barbara Boxer and Congresspersons Anna Eshoo, Mike Honda, and Zoe Lofgren, urging them to (1) work to repeal all provisions of the Act that infringe on civil liberties and (2) to oppose any future legislation, rules regulations or executive orders that strengthen,

reinforce, broaden, or otherwise expand the provisions of the Act that infringe on civil liberties, including PATRIOT Act II. A copy of the letter and resolution shall also be sent to President Bush and Attorney General John Ashcroft.